

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

IN RE CHARGE OF
Dania Nova

UNITED STATES OF AMERICA,

COMPLAINANT,

v.

MMNH, INC. d/b/a
MARY MURPHY NURSING HOME,

RESPONDENT.

8 U.S.C. § 1324b Process

OCAHO Case No. 93B00028

CONSENT ORDER

This action comes before the Administrative Law Judge upon the filing of a complaint by the United States (through the Office of Special Counsel for Immigration Related Unfair Employment Practices ("Special Counsel")) on February 10, 1993 alleging a violation of the anti-discrimination provisions of the Immigration Reform and Control Act of 1986, as amended, 8 U.S.C. § 1324b.

In its complaint, the Special Counsel alleges that the MMNH, Inc. ("Mary Murphy Nursing Home"), refused to honor documentation tendered by Ms. Nova that on its face reasonably appeared to be genuine in violation of 8 U.S.C. § 1324b(a)(6). The complaint also alleged that the Mary Murphy Nursing Home committed a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(6).

Note: Paragraph 15, as proposed, deleted, text added.
4/16/93

The parties desire to resolve this litigation without resorting to protracted and costly litigation, and therefore, as indicated by the consent of the parties at the end of this Order, have consented to the entry of this Order.

The parties agree that there is no need for an evidentiary hearing, trial or other adjudication. Rather, the parties stipulate to the jurisdiction of the Administrative Law Judge over the parties and to the Administrative Law Judge's subject matter jurisdiction over this matter and waive the entry of findings of fact and conclusions of law.

In resolution of this action, the parties hereby agree and the Administrative Law Judge expressly approves, enters, and orders the following:

1. The Mary Murphy Nursing Home agrees to pay a civil penalty to the United States Treasury in the amount of Two Thousand Eight Hundred and Fifty Dollars (\$2,850.00).

2. The Mary Murphy Nursing Home agrees to pay One Thousand Three Hundred Seventy One Dollars (\$1,371.00) in lost wages to Ms. Nova.

3. The civil penalty and lost wages amount discussed in the preceding paragraphs shall be delivered to the Special Counsel within fourteen days from the date the Consent Decree is entered by the Administrative Law Judge. The Special Counsel will then forward the check representing lost wages to Ms. Nova.

4. The Mary Murphy Nursing Home agrees to offer Ms. Nova within fourteen days from the date the Consent Decree is entered

by the Administrative Law Judge a part-time position (16 hours per week) in the kitchen. Ms. Nova's seniority and benefits will be determined as though she worked for the Mary Murphy Nursing Home uninterrupted since June 26, 1992. Ms. Nova's wage rate will be determined as though she began work on June 26, 1992. Ms. Nova will have fourteen days after the offer to accept the position offered by Mary Murphy Nursing Home. To accept, Ms. Nova must be available to return to work within thirty days of the offer.

5. The Mary Murphy Nursing Home agrees that it shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b.

6. The Mary Murphy Nursing Home agrees that it will not request, for purposes of satisfying the employment verification (INS Form I-9) requirements of 8 U.S.C. § 1324a(b), more or different documents than required by law. In addition, the Mary Murphy Nursing Home agrees that it will not refuse to honor documents presented that on their face reasonably appear to be genuine for employment verification purposes. The Mary Murphy Nursing Home agrees that it will allow employees, including non-citizen employees, to present any document or combination of documents acceptable by law for employment verification purposes.

7. The Mary Murphy Nursing Home will post a notice, in a place visible to all employees, advising all employees of their rights and duties under 8 U.S.C. § 1324b. The notice is to be supplied by the Special Counsel and will be posted for a period

of one year following the date of entry of the Consent Order.
The notice is attached as "Notice A."

8. The Mary Murphy Nursing Home agrees that it will educate its personnel responsible for formulating and/or carrying out its hiring policy concerning their responsibilities under 8 U.S.C. § 1324b. The Mary Murphy Nursing Home will educate its personnel within three months from the date of entry of the Consent Order. The Mary Murphy Nursing Home will certify in writing to the Office of Special Counsel that it has complied with this educational provision. At its option, the Mary Murphy Nursing Home may accomplish the required education by either of the following two methods:

- a) An employee may attend a seminar concerning an employer's obligations under the Immigration Reform and Control Act of 1986. Such seminar must include a presentation involving the unfair employment practices provisions of 8 U.S.C. § 1324b; or
- b) All employees involved in the employment verification (INS Form I-9) process may view an educational videotape designated by the Office of Special Counsel.

9. The Mary Murphy Nursing Home agrees not to retaliate against Ms. Nova in any way, and to evaluate her performance fairly and objectively, without any discrimination or knowledge on the part of her supervisors or evaluators of her charge, the complaint, or this Consent Order.

10. Mary Murphy Nursing Home will revise its written employment policy to reflect the requirements of 8 U.S.C. § 1324b, and will submit the revised policy to the Office of Special Counsel within six months following the date of entry of this Consent Order.

11. The Special Counsel and the Mary Murphy Nursing Home waive any further procedural steps before the Administrative Law Judge.

12. The Special Counsel and the Mary Murphy Nursing Home waive any right to challenge, contest, oppose or object to the validity of this Consent Order, including any claim thereunder, in any forum.

13. The decision and order based upon the consent findings shall have the same force and effect as a decision and order made after a full hearing.

14. The Special Counsel and the Mary Murphy Nursing Home agree to bear their own costs, attorney fees and other expenses incurred in this action.

4/16/93
15. The Administrative Law Judge shall retain jurisdiction of this case for purposes of enforcing this Consent Order for a period of three years from the date the Consent Order is approved, unless the parties move to lengthen or lessen the period. The parties shall endeavor to resolve informally any

differences regarding interpretation and compliance with the
Consent Order prior to bringing such matters to the
Administrative Law Judge for consideration.

This case is dismissed settled.

SO ORDERED this 6th day of April, 1992.

Marvin H. Morse
Honorable Marvin H. Morse
Administrative Law Judge

APPROVED:

Counsel for United States:

WILLIAM HO-GONZALEZ
Special Counsel

By: *Bruce Friedman*
Bruce Friedman
Attorney

4-6-93
Date

Counsel for Mary Murphy Nursing Home:

By: *Joel Leonard*
Joel Leonard
Cullen & Butters

29 March 1993
Date

Dania Nova:

Dania Nova
Dania Nova

5-7-93
Date

ATTACHMENT A

THE IMMIGRATION REFORM AND CONTROL ACT (IRCA) PROHIBITS EMPLOYMENT DISCRIMINATION

WHAT YOU SHOULD KNOW

Under IRCA, when hiring, discharging, or recruiting or referring for a fee, employers with four or more employees may not:

Discriminate because of national origin against U.S. citizens, U.S. nationals and authorized aliens. (Employers of 15 or more employees should note that the ban on national origin discrimination against any individual under Title VII of the Civil Rights Act of 1964 continues to apply.)

Discriminate because of citizenship status against U.S. citizens, U.S. nationals, and the following classes of aliens with work authorization: permanent residents, temporary residents (that is, individuals who have gone through the legalization program), refugees, and asylees.

Employers can demonstrate compliance with the law by following the verification (I-9 form) requirements and treating all new hires the same. This includes the following steps:

Establish a policy of hiring only individuals who are authorized to work. A "U.S. citizens only" policy in hiring is illegal. An employer may require U.S. citizenship for a particular job only if it is required by federal, state, or local law, or by government contract.

Complete the I-9 Form for all new hires. This form gives employers a way to establish that the individuals they hire are authorized to work in the United States.

Permit employees to present any document or combination of documents acceptable by law. Employers cannot prefer one document over others for purposes of completing the I-9 Form. Authorized aliens do not all carry the same documents. For example, not all aliens who are authorized to work are issued "green cards." As long as the documents are allowed by law and appear to be genuine on their face and to relate to the person, they should be accepted.

IRCA established the Office of Special Counsel for Immigration Related Unfair Employment Practices to enforce the IRCA antidiscrimination provision. Discrimination charges are filed with this Office. Charges or written inquiries should be sent to: The Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 27728, Washington, D.C. 20038-7728. The Office can also be reached by calling 1-800-255-7688 (toll free) or 202-616-5594; 1-800-237-2515 or 202-616-5525 (TDD device for the hearing impaired). For questions about Title VII, please contact the Equal Employment Opportunity Commission at 1-800-USA-EEOC (toll free) or 202-634-7057 (TDD).

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Consent Order were mailed first class, postage prepaid this 6th day of April, 1993 addressed as follows:

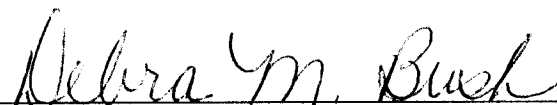
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